

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

RECEIVED
U.S. DISTRICT COURT
MASSACHUSETTS OFFICE
FEB 12 2004
U.S. DISTRICT COURT
OF MASSACHUSETTS

MASSACHUSETTS DEVELOPMENT)	
FINANCE AGENCY)	C.A. No.: CV 10203 PBS
Plaintiff)	
)	
v.)	
)	
ADP MARSHALL, INC., a FLUOR)	
DANIEL COMPANY, and FIREMAN'S)	
FUND INSURANCE COMPANY)	
Defendants)	
)	
ADP MARSHALL, INC.)	
Plaintiff in Counterclaim)	
)	
v.)	
)	
MASSACHUSETTS DEVELOPMENT)	
FINANCE AGENCY)	
Defendant in Counterclaim)	
)	
ADP Marshall, Inc.)	
Third Party Plaintiff)	
)	
v.)	
)	
ALLIED CONSULTING ENGINEERING)	
SERVICES, INC. ANDOVER CONTROLS)	
CORPORATION, R & R WINDOW)	
CONTRACTORS, INC., AND DELTA)	
KEYSPAN, INC. N/K/A DELTA)	
KEYSPAN, LLC)	
Third Party Defendants)	

**MASSACHUSETTS DEVELOPMENT FINANCE AGENCY'S
ANSWER TO ADP MARSHALL, INC.'S COUNTERCLAIM**

The plaintiff, Massachusetts Development Finance Agency (“MDFA”), hereby responds to the Counterclaim of the defendant, ADP Marshall, Inc. (“ADP”) as follows.

1. MDFA admits the allegations contained in Paragraph 1 of the Counterclaim.
2. MDFA admits the allegations contained in Paragraph 2 of the Counterclaim.
3. MDFA admits the allegations contained in Paragraph 3 of the Counterclaim.
4. MDFA denies the allegations contained in Paragraph 4 of the Counterclaim.

5. MDFA admits the allegations contained in Paragraph 5 of the Counterclaim.
6. MDFA admits that ADP brought a proceeding to adjudicate the backcharge before DALA, but denies the remaining allegations.
7. MDFA admits the allegations contained in Paragraph 7 of the Counterclaim.
8. MDFA admits the allegations contained in Paragraph 8 of the Counterclaim.
9. MDFA admits the allegations contained in Paragraph 9 of the Counterclaim.
10. MDFA admits the allegations contained in Paragraph 10 of the Counterclaim.
11. MDFA admits the allegations contained in Paragraph 11 of the Counterclaim.
12. MDFA admits the allegations contained in Paragraph 12 of the Counterclaim.
13. MDFA denies the allegations contained in Paragraph 13 of the Counterclaim.
14. MDFA denies the allegations contained in Paragraph 14 of the Counterclaim.
15. MDFA denies the allegations contained in Paragraph 15 of the Counterclaim.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Counterclaim fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

ADP failed to perform all of its obligations under the contract and, therefore, it cannot claim on the contract.

THIRD AFFIRMATIVE DEFENSE

ADP failed to substantially complete its work.

FOURTH AFFIRMATIVE DEFENSE

ADP materially breached the contract.

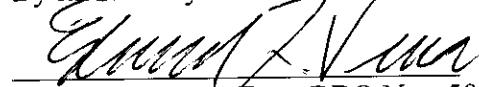
FIFTH AFFIRMATIVE DEFENSE

MDFA is entitled to offset.

SECOND AFFIRMATIVE DEFENSE

MDFA is entitled to setoff.

Respectfully Submitted,
MASSACHUSETTS DEVELOPMENT
FINANCE AGENCY,
By its attorneys

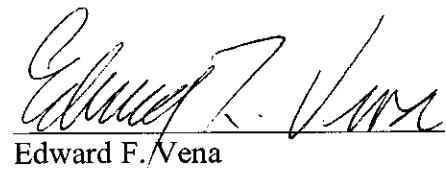

Edward F. Vena, Esq., BBO No.: 508660
Charles A. Plunkett, Esq., BBO No.: 547714
VENA, RILEY, DEPTULA, LLP
250 Summer Street, 2nd Floor
Boston, MA 02210
(617) 951-2400

Date: February 11, 2004

CERTIFICATE OF SERVICE

I, Edward F. Vena, Esquire, hereby certify that on this 11th day of February 2004, I mailed a copy of the foregoing, Massachusetts Development Finance Agency's Answer to ADP Marshall, Inc.'s Counterclaim, via first class mail, in a properly addressed postage paid envelope to the following parties:

Andrew J. Tine, Esquire
Haese, LLC
Attorneys at Law
70 Franklin Street, 9th Floor
Boston, MA 02210



The image shows a handwritten signature in black ink, which appears to read "Edward F. Vena". The signature is fluid and cursive, with a prominent 'E' at the beginning.

Edward F. Vena

VENA, RILEY, DEPTULA,
LLP

FILED
BOSTON OFFICE

FEB 12 P 1:20 February 11, 2004

250 Summer Street, 2nd Floor
Boston, MA 02210

Phone: 617.951.2400
Fax: 617.951.2420

Edward F. Vena
Direct Dial: 617.951.9385
Email: evena@vrddl.com

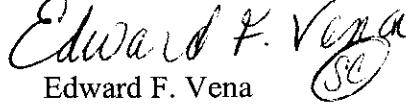
United States District Court
Civil Clerk's Office
John Joseph Moakley U.S. Courthouse
1 Courthouse Way
Boston, MA 02210

RE: Massachusetts Department Finance Agency v. ADP Marshall,
Inc., a Fluor Daniel Company, and Fireman's Fund Insurance
Company
C/A No.: CV 10203 PBS
VRD Reference No.: 213

Dear Sir/Madam:

Enclosed for filing in the above-entitled matter, please find Massachusetts Development Finance Agency's Answer to ADP Marshall, Inc.'s Counterclaim.

Thank you for your attention to this matter.

Very truly yours,

Edward F. Vena

EFV/sc
Enclosures

cc: Andrew J. Tine, Esquire
Suffolk Superior Court, Civil Clerk's Office